



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Ed Shikada
Katy Allen

**SUBJECT: MEASURE D CANDIDATE
PROJECT RECOMMENDATIONS**

DATE: May 28, 2004

Approved /s/

Date

Council District: Citywide
SNI: NA

This memorandum presents project recommendations for the implementation of Measure D, approved by San José voters on March 2, 2004. Measure D authorizes the use of design-build project delivery for public works capital improvements under specific circumstances.

As previously communicated with the City Council, this report has been formatted as a Manager's Budget Addendum (MBA), based on the anticipated potential for budget implications of Measure D implementation. As noted below, however, our evaluation has determined that proceeding with design-build project delivery in Fiscal year 2004-05 will not require changes to proposed project appropriations. As such, City Council concurrence is requested to proceed with design-build project documents for the specific projects identified.

RECOMMENDATION

Approve the recommended list of candidate design-build projects and authorize staff to initiate the development of project scope documents and professional service procurement as needed.

BACKGROUND

Measure D amended the City Charter to allow the design-build procurement process for public works contracts that cost over \$5,000,000, when the City Council finds that doing so would save money or result in faster project completion. On March 9th, the City Council directed the City Attorney to draft an implementation ordinance to implement Measure D. The City Council further directed outreach to stakeholder groups and benchmarking with agencies that use design-build.

In response to this direction, staff from several City departments formed a team to examine key implementation issues and recommend design-build pilot projects to be pursued during fiscal year 2004-05.

ANALYSIS

In order to implement a design-build program that is informed by the experience and lessons learned of other agencies, our approach has been organized into a number of key focus areas that could guide the structure and scope of design-build implementation in San José. These focus areas included:

- A. Comparable agency benchmarking
- B. Stakeholder outreach
- C. Administrative framework
- D. Staffing needs
- E. Project selection

The following sections report on the outcomes in each area.

A. Comparable Agency Benchmarking

Staff contacted various public agencies regarding their experience using design-build (D-B) to deliver capital projects. As illustrated below, responses indicate widely varying perspectives on the advantages and limitations of D-B procurement.

The City of San Diego, State of California General Services Agency and the City of Phoenix have each used D-B consistently within the past three to four years. These agencies generally reported receiving higher quality projects with D-B compared to prior low-bid projects. Other agencies, such as the Valley Transportation Authority, Santa Clara Water District, City and County of San Francisco, City of Oakland, and the City of Sacramento have the capability to use D-B, but only occasionally use it if at all.

Agencies that use D-B consistently reported applicability to a variety of project types. The City of Phoenix Water Department uses D-B for almost all projects, including a current \$300 million design/build/operate water treatment plant. San Diego is using D-B for its fire bond projects and plans to use D-B for libraries. In most cases, the agencies noted that they only pursue D-B on projects for which they do not have in-house design staff expertise.

Those agencies using D-B infrequently to date, such as the Santa Clara Valley Transportation Authority, commented that they have not found D-B beneficial for projects that require extensive up-front (pre-environmental clearance) design work since this limits the potential savings from the D-B consultant design work. Others reported receiving generally satisfactory bids with design/bid/build and therefore do not rely heavily on D-B for efficient delivery.

Agencies were also polled on project management, with most responding that similar skills are used for both design/bid/build and D-B projects. Some recommended that D-B project managers be good negotiators and capable of making business decisions on behalf of the agency. D-B

project managers may need to give more control of the project to the D-B firm, particularly during construction.

Most agencies reported using existing staff resources for D-B projects. Many agencies stressed the importance of having all legal and contractual documents well prepared before execution of a D-B project. As a new area for agencies, contract agreements become critical when conflicts arise. The agencies have also successfully implemented policies such as prevailing wage, minority, women, and local business participation, and public art.

Finally, the use of performance measures was queried and found to be very limited. Intuitively, the success of D-B as an alternative project delivery method would be measured through cost savings, time savings, and overall project quality as compared to conventional design/bid/build. However, obtaining an “apples to apples” comparison can be problematic given the variety of issues that typically arise with major construction projects. Conclusions are therefore typically subjective.

At the same time, statistical benchmarks are available through the City’s involvement with the California Multi-Agency CIP Benchmarking Study. This forum has established a database of project costs and durations from the seven largest cities in California. As our City begins using D-B, this resource will allow staff to compare final costs and durations with initial estimates and typical experiences, as well as measure quality from customer satisfaction (public, officials, City owner departments, and maintenance staff).

B. Stakeholder Outreach

Outreach efforts began in March 2004, with notifications to the following industry groups:

- Construction Management Association of America
- Associated General Contractors
- American Institute of Architects
- Consulting Engineers and Land Surveyors of California
- Silicon Valley Chamber of Commerce
- Construction Employers Association
- League of Women Voters
- Building Trades Council
- Small Business Commission
- Airport Peer Review Panel

In addition, e-mail notifications were sent to all subscribers to the Public Works Bid Hot Line. Subscribers consist of 392 design and construction professionals, including small and local businesses that may not be active members of the organizations noted above. Notices included information about Measure D, including the text of the Measure and copies of the memoranda approved by the City Council on December 16, 2003 and March 9, 2004. The e-mail provided notification of a general industry outreach meeting for April 16, 2004.

The April 16th outreach meeting was attended by representatives of several industry groups. A presentation was made by City staff regarding the Capital Program and other policies recently enacted within San José. Nine attendees provided comments on the D-B implementation

ordinance. Written comments have been received from nine other groups and individuals. In addition to reviewing and addressing the comments, City staff committed to distributing the draft implementation ordinance to participants and commenters when available.

Input to date has ranged from general to very specific. Most comments are very supportive of the design-build Measure, although there were some concerns expressed about over-reliance on a single D-B entity. Most suggested that there are excellent industry models that should be followed in drafting the implementation ordinance. Several favored using “bridging” architects and engineers hired directly by the City for initial project development and to provide oversight through construction. The level of design completion (such as 30, 60 or 90%) by the “bridging” architect/engineer prior to hiring the design-build entity should be a function of the level of oversight and control desired by the City for individual projects. For example, for a facility involving fine design detail, it may be appropriate to bring the project development to 98% using the services of the “bridging” architect prior to using the Request For Proposal process to select the D-B entity. A high level of design completion by the bridging architect would have the combined benefit of a short design completion timeframe and early start of construction.

The interdepartmental City staff team is currently reviewing a draft implementation ordinance. Upon completion of this review, the draft ordinance will be circulated for additional stakeholder input, prior to presentation to the City Council. The key issue of focus in the implementation ordinance is the process for selecting a design-build entity.

C. Regulatory and Administrative Framework

The existence of consistent and supporting regulatory and administrative requirements (or eliminating conflicts) is a key to ensuring that design-build is a successful tool for construction in the City of San José. In reviewing this issue, staff has identified several areas for further consideration.

1. Budget and Finance – Construction projects over \$5 million often involve contracts that span more than a single year, requiring budget allocations that span fiscal years. Staff will need to review and adjust procedures needed to meet unique D-B budgeting, contract structures and accounting requirements. One example would be where the funding needed to complete a project is not available in the first year of a D-B contract. Staff will evaluate the potential for phased contracts and what, if any, termination provisions are needed.

2. Applicability to “Essential Service” Facilities – While consolidating design and construction under a single entity can be attractive for many projects, it has raised some concerns related to “essential service” facilities. Essential service facilities, specifically police and fire stations, are required to meet more stringent seismic standards for structural, mechanical, electrical and plumbing elements. The need for quality control and independent oversight during design and construction has led to some concern regarding the applicability of design-build to such facilities.

3. Environmental Clearance – The environmental review process has the potential to necessitate changes to facility scope, design, and construction approach, as well as providing a community input framework. Most agencies have therefore found design-build procurement to be most effective for projects that have completed their environmental review.

4. Project Cost Estimation and Changes – The City has an adopted policy on construction cost estimating. In design-build, different methodologies may be needed to provide for accurate construction cost estimates, as well as the circumstances and process for revising estimates after work has commenced.

5. Construction Contract Types – The City typically uses “lump sum” contracts for construction. With a lump sum contract, the bidders develop a bottom line cost for providing all the materials, equipment and personnel to construct the facility. With design-build, there are opportunities to use other contract types, such as cost plus profit, guaranteed maximum price, and unit price contracts. Staff will investigate the applicability of alternative contract types for D-B construction.

6. Other Administrative Issues – In addition to the analyses listed above, there are other administrative issues that staff will need to address. Among these are: insurance requirements over and above current standards, ownership of the work products of the design-build entity in case of contractor failure, materials testing and inspection, permitting, warranties, Life-Cycle Cost analyses, LEED requirements, operations and maintenance requirements, and Public Art.

D. Staffing Needs

Two issues related to staffing have been identified. The first is the organization and skills of staff responsible for delivering D-B projects. The second is the potential impact to City staff.

1. Organization and Skills – As noted previously, a variety of administrative, communications, and interpersonal issues are likely to arise during the initial phase-in of D-B implementation. In light of this, special coordinating teams should be established to provide support to designated project managers responsible for the delivery of D-B projects. These teams would assist in identifying any special project manager skills or training needs. The teams would include individuals who are knowledgeable in public works construction, while open to a philosophical change in project delivery approach, with members from client and implementation departments. Special training should also be considered for the teams, with the expectation that these teams will train others as the organization gains D-B experience.

2. Staffing Impacts – Some employees perceive D-B as a mechanism for contracting out work that could go to City staff. However, the likelihood of this occurring is relatively low, since City staff would typically not be designing \$5 million projects. No significant impacts to City staffing are therefore expected at this time, but the issue will need to be examined as D-B candidate projects are identified to determine if staffing adjustments are necessary.

E. Project Selection

Much of the preceding investigation and outreach has been intended to guide the identification of San José's first design-build projects in fiscal year 2004-2005. Based on the results of this work, the following project selection criteria have been identified:

- The projects should start design in FY 04-05 or still be in the initial design phase in FY 04-05 with a design contract that can be terminated or modified;
- not require extensive public input or environmental impact analysis, or have completed these phases;
- have well-defined program with standards, performance specifications, and expectations;
- would benefit significantly from faster completion or have a high potential for design changes during construction;
- are fully funded; and,
- are not "essential service" facilities.

These criteria helped our staff team recommend projects most likely to succeed and establish a positive track record for future D-B projects. The projects recommended to pilot this approach are listed on the following table.

2004-05 CAPITAL IMPROVEMENT PROGRAM RECOMMENDED DESIGN-BUILD CANDIDATE PROJECTS

City Service Area (CSA)	Project	Design and Construction Estimate	Scheduled Completion
Aviation	Airline Maintenance Facility	\$9,670,000	1 st Qtr 2006
Aviation	North Concourse Baggage System	\$18,830,000	2 nd Qtr 2007
Aviation	North Concourse Information Technology System	\$10,160,000	4 th Qtr 2006
Recreation & Cultural Services	Singleton Sports Park	\$17,000,000	2 nd Qtr 2008
Public Safety	Driver Training Center	\$7,400,000	4 th Qtr 2006
Environmental & Utility Services	Fourth Major Interceptor Phase VI (Sewer)	\$13,970,000	2 nd Qtr 2008

It should be noted that other types of projects such as community centers and libraries could be delivered using D-B, but are not included among initial projects due to the extensive public input typically involved through design.

With City Council concurrence to proceed with the projects identified above, staff will initiate the development of project scope documents leading to the release of D-B requests for proposals. Since consultant assistance will likely be needed to prepare project scope documents, staff will return to the City Council for action where necessary to engage or amend consultant agreements for the needed services.

Finally, it should also be noted that as specified by Measure D, final decisions to proceed with design-build project delivery of each project (versus design/bid/build) must be approved by the City Council and based on a finding that D-B would result in faster or lower cost project completion. It is anticipated that this finding would be made at the point of award of a design-build contract.

COORDINATION

This report has been coordinated with the following departments: Aviation, Environmental Services, Library, Parks, Recreation & Neighborhood Services, and Police; the City Manager's Budget Office and CIP Action Team, and the Office of the City Attorney.

/s/
Katy Allen
Director of Public Works

/s/
Ed Shikada
Deputy City Manager